

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2005 Legislative Session

Legislative Day # 7

BILL NO. 2005-12

Introduced by: Charles County Commissioners

AN ACT concerning

CRITICAL AREA VARIANCE AND ENFORCEMENT PROVISIONS

Date introduced: 5 / 2 / 2005

Public Hearing: 05 / 23 / 2005

Commissioners Action: 06 / 20 / 2005 Enact

Commissioner Votes: WC: Y, RF: Y, EP: Y, CQK: Y, AS: Y

Pass/Fail: Pass

Effective Date: 06 / 30 / 2005

Remarks: _____

NOTE: CAPITALS indicate matter added to existing text.
[Brackets] indicate matter deleted from existing law.
~~Strikeouts~~ indicate matter deleted since Introduction of Bill.
Underlines indicate matter added since Introduction of Bill.

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2005 **Legislative Session**

Bill No. 2005-

Chapter. No. 297

Introduced by Charles County Commissioners

Date of Introduction: May 2, 2005

BILL

1 AN ACT concerning

2 **ADDING DEFINITIONS SPECIFIC TO THE CRITICAL AREA, INCREASING**
3 **FLEXIBILITY OF THE CRITICAL AREA DEVELOPMENT STANDARDS SPECIFIC**
4 **TO MAXIMUM DENSITY, ADDING A PROVISION FOR A MAXIMUM MONETARY**
5 **PENALTY FOR CRITICAL AREA VIOLATIONS, AND ADDING TO THE CRITICAL**
6 **AREA VARIANCE PROVISIONS**

7
8 FOR the purpose of

9 incorporating language adopted by the Maryland General Assembly in 2004, as
10 necessary for incorporation into the Critical Area programs of local jurisdictions

11
12 BY amending:

13 Chapter 297 - Zoning Regulations

14 Article IX, §128, providing definitions specific to the Critical Area;

15 Article IX, §132, Critical Area Development Standards;

16 Article IX, §135, Critical Area Violations; and,

17 Article XXV, regarding Variances specific to the Critical Area.

18 *Code of Charles County, Maryland*

19 (May 2004 Edition)

1
2 **SECTION 1.** BE IT ENACTED BY THE COUNTY COMMISSIONERS OF
3 CHARLES COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as
4 follows:
5

6 **Chapter 297: Zoning**
7 **Article IX - Critical Area Zones**
8 **Section 297-128, Definitions**
9

10 **DWELLING UNIT - A SINGLE UNIT, BEING AN ENCLOSED STRUCTURE,**
11 **CONTAINING COMPLETE, INDEPENDENT LIVING FACILITIES DESIGNED FOR**
12 **AND HELD READY FOR AT LEASE ONE PERSON, INCLUDING PERMANENT**
13 **PROVISIONS FOR SANITATION, COOKING, EATING, SLEEPING, AND OTHER**
14 **ACTIVITIES ROUTINELY ASSOCIATED WITH DAILY LIFE. DWELLING UNIT**
15 **INCLUDES ACCESSORY APARTMENT OR GUEST HOUSE.**
16

17 **UNWARRANTED HARDSHIP - UNWARRANTED HARDSHIP MEANS THAT**
18 **WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND**
19 **SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE**
20 **VARIANCE IS REQUESTED.**
21

22 **Chapter 297: Zoning**
23 **Article IX - Critical Area Zones**
24 **Section 297-132.A, Critical Area Development Standards**
25

- 26 (3) Resource Conservation Zone (RCZ). Residential densities in the Resource
27 Conservation Zone shall be limited to no more than [be] one dwelling unit per 20
28 acres, except as provided for in §§ 297-130 and 297-134, **AND BELOW**
29 **UNDER PARAGRAPH (5).**

1 (5) **WITHIN THE RCZ, ONE ADDITIONAL DWELLING UNIT PER LOT**
2 **OR PARCEL SHALL BE CONSIDERED AS PART OF THE PRIMARY**
3 **DWELLING UNIT, FOR THE PURPOSE OF THE DENSITY**
4 **CALCULATION UNDER THIS SUBSECTION, IF THE ADDITIONAL**
5 **DWELLING UNIT MEETS EITHER OF THE FOLLOWING SETS OF**
6 **CONDITIONS:**

- 7
- 8 (a) 1. **IS LOCATED WITHIN THE PRIMARY DWELLING UNIT**
9 **OR ITS ENTIRE PERIMETER IS WITHIN 100 FEET OF**
10 **THE PRIMARY DWELLING UNIT;**
11 2. **DOES NOT EXCEED 900 SQUARE FEET IN TOTAL**
12 **ENCLOSED AREA; AND**
13 3. **IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM**
14 **AS THE PRIMARY DWELLING UNIT; OR**

- 15
- 16 (b) 1. **IS LOCATED WITHIN THE PRIMARY DWELLING UNIT;**
17 2. **BY ITS CONSTRUCTION, DOES NOT INCREASE THE**
18 **AMOUNT OF IMPERVIOUS SURFACE ALREADY**
19 **ATTRIBUTED TO THE PRIMARY DWELLING UNIT;**
20 **AND**
21 3. **IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM**
22 **AS THE PRIMARY DWELLING UNIT.**

23

24 (6) **AN ADDITIONAL DWELLING UNIT MEETING ALL THE CRITERIA**
25 **OF THIS SECTION THAT IS SEPARATE FROM THE PRIMARY**
26 **DWELLING UNIT MAY NOT BE SUBDIVIDED OR CONVEYED**
27 **SEPARATELY FROM THE PRIMARY DWELLING UNIT.**

28

29 (7) **THE PROVISIONS OF THIS SECTION APPLY TO DENSITY**

1 **CALCULATIONS ONLY, AND MAY NOT BE CONSTRUED TO**
2 **AUTHORIZE THE COUNTY TO GRANT A VARIANCE, UNLESS THE**
3 **VARIANCE IS GRANTED IN ACCORDANCE WITH THE**
4 **REQUIREMENTS AND STANDARDS IN THIS ORDINANCE FOR**
5 **VARIANCES IN THE CRITICAL AREA.**

- 6
- 7 **(8) THE COUNTY SHALL MAINTAIN RECORDS OF ALL BUILDING**
8 **PERMITS ISSUED UNDER THIS SECTION FOR ADDITIONAL**
9 **DWELLING UNITS CONSIDERED PART OF A PRIMARY DWELLING**
10 **UNIT, AND SHALL PROVIDE THIS INFORMATION ON A**
11 **QUARTERLY BASIS TO THE CRITICAL AREA COMMISSION.**

12

13 **Chapter 297: Zoning**

14 **Article IX - Critical Area Zones**

15 **Section 297-135, Critical Area Violations**

- 16
- 17 A. Violations in the Critical Area will be enforced in accordance with Article I of this
18 chapter, **EXCEPT FOR §297-4.A, REGARDING THE MAXIMUM FINE OF \$300.**
19 **IN ADDITION TO ANY OTHER PENALTY APPLICABLE UNDER STATE OR**
20 **COUNTY LAW, A PERSON WHO VIOLATES A PROVISION OR NATURAL**
21 **RESOURCES ARTICLE, TITLE 8, SUBTITLE 18, OR THIS CHAPTER, IS**
22 **SUBJECT TO A FINE NOT EXCEEDING \$10,000.**
- 23
- 24 B. **IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED**
25 **UNDER PARAGRAPH A, THE COUNTY MAY CONSIDER THE FOLLOWING:**
- 26
- 27 (1) **THE GRAVITY OF THE VIOLATION;**
- 28
- 29 (2) **ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE**

1 **VIOLATION; AND,**

2
3 **(3) THE ENVIRONMENTAL IMPACT OF THE VIOLATION.**

4
5 **C.** The following additional penalties **SHALL** also apply:

6
7 (1) The area disturbed shall be restored and additional required remediation shall
8 include the planting of [natural] forest vegetation **NATIVE TO SOUTHERN**
9 **MARYLAND AND ADAPTABLE TO SITE CONDITIONS, IN**
10 **ACCORDANCE WITH §297-132.E. OF THIS ARTICLE,** in the amount of
11 three times the area disturbed.

12
13 (2) The Buffer shall be the first priority for replanting wherever possible.

14
15 **[B] D.** Planting shall take place within ... of remediation required.

16
17 **Chapter 297: Zoning**

18 **Article XXV - Board of Appeals**

19 **Section 297-416.K, Variances**

20
21 **(4) IN CONSIDERING AN APPLICATION FOR VARIANCE, THE BOARD OF**
22 **APPEALS SHALL PRESUME THAT THE SPECIFIC DEVELOPMENT**
23 **ACTIVITY IN THE CRITICAL AREA THAT IS SUBJECT TO THE**
24 **APPLICATION AND FOR WHICH A VARIANCE IS REQUIRED DOES NOT**
25 **CONFORM WITH THE GENERAL PURPOSE AND INTENT OF NATURAL**
26 **RESOURCES ARTICLE, TITLE 8, SUBTITLE 18, COMAR TITLE 27, AND THE**
27 **REQUIREMENTS OF THE COUNTY'S CRITICAL AREA PROGRAM.**

28
29 **(5) IF THE VARIANCE REQUEST IS BASED ON CONDITIONS OR**

1 **CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE**
2 **APPLICANT, INCLUDING THE COMMENCEMENT OF DEVELOPMENT**
3 **ACTIVITY BEFORE AN APPLICATION FOR A VARIANCE HAS BEEN**
4 **FILED, THE COUNTY MAY CONSIDER THAT FACT.**

5
6 **(6) AN APPLICANT HAS BOTH THE BURDEN OF PRODUCTION AND THE**
7 **BURDEN OF PERSUASION TO OVERCOME THE PRESUMPTION OF**
8 **NONCONFORMANCE ESTABLISHED IN PARAGRAPH (4) ABOVE.**

9
10 **(7) BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, THE BOARD**
11 **SHALL MAKE WRITTEN FINDINGS AS TO WHETHER THE APPLICANT**
12 **HAS OVERCOME THE PRESUMPTION OF NONCONFORMANCE**
13 **ESTABLISHED ABOVE.**

14
15 **(8) WITH DUE REGARD FOR THE PERSON’S EXPERIENCE, TECHNICAL**
16 **COMPETENCE, AND SPECIALIZED KNOWLEDGE, THE WRITTEN**
17 **FINDINGS MAY BE BASED ON EVIDENCE INTRODUCED AND TESTIMONY**
18 **PRESENTED BY:**

19
20 **A. THE APPLICANT;**

21 **B. THE COUNTY OR ANY OTHER GOVERNMENT AGENCY; OR**

22 **C. ANY OTHER PERSON DEEMED APPROPRIATE BY THE**
23 **COUNTY.**

24
25 **SECTION 2.** BE IT FURTHER ENACTED, that this Act shall take effect TEN (10)
26 calendar days after it becomes law.

27
28
29 COUNTY COMMISSIONERS OF CHARLES COUNTY,

MARYLAND

Wayne Cooper, President

Robert J. Fuller, Vice President

Edith J. Patterson

Candice Quinn Kelly

Allan R. Smith

ATTEST:

Linda Rollins, Clerk